

MARINE SANCTUARIES

OCTOBER 26 (legislative day, OCTOBER 24), 1983.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1102]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1102) to provide authorization of appropriations for title III of the Marine Protection, Research, and Sanctuaries Act of 1972, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

The primary objective of S. 1102, as reported, is to authorize appropriations for the National Marine Sanctuary program for fiscal years 1984, 1985, and 1986. The amendment to the act will also resolve the problems associated with implementing the program.

BACKGROUND AND NEED

Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate areas as national marine sanctuaries for the purpose of "preserving or restoring. . . their conservation, recreational, ecological or esthetic values". The National Marine Sanctuary program is designed to recognize marine areas of national significance whose protection and beneficial use call for comprehensive planning and management. The National Oceanic and Atmospheric Administration (NOAA) administers the program through its Office of Ocean and Coastal Resource Management.

Six marine sanctuaries have been established to date:

1. The wreck of the Civil War ironclad U.S.S. *Monitor* off the coast of North Carolina;
2. A coral reef tract at Key Largo, Fla.;

3. A marine mammal and seabird habitat in the Channel Islands off Southern California;

4. A breeding habitat for marine mammals and seabirds in the Point Reyes-Farallon Islands of Northern California;

5. A coral reef tract at Looe Key, Fla.; and

6. Gray's Reef, a rock reef area off the coast of Georgia.

Congressional concerns have been raised over the scope of the program, the size and number of marine sanctuaries, the activities to be regulated within the sanctuaries, and the goals and management of the program.

The principal controversy results from confusion surrounding the national marine sanctuary program's designation process. In particular, offshore oil and gas and commercial fishery interests have expressed concerns that sanctuary designations will restrict their activities. In 1982, the Western Oil and Gas Association (WOGA) filed suit in U.S. District Court challenging the legitimacy of the marine sanctuary designation in California's Channel Islands Sanctuary. In addition, fishing interests, especially in Maine and Alaska, have expressed fears that large areas might be singled out for sanctuary status where commercial fishing could be excluded.

In 1980, the act was amended to streamline the site designation process; improve consultation and coordination by various Federal, State and local entities; affirm the validity of permits, licenses and authorizations; outline enforcement activities; and allow Congress to disapprove sanctuary designations. Despite these amendments, concerns about the program implementation remained.

S. 1102 is expected to reduce the confusion surrounding this program by providing explicit guidance to the Administration as to Congress' intent regarding the National Marine Sanctuary program. The bill establishes standards and conditions for the Secretary of Commerce to apply when assessing marine areas for sanctuary designation, outlines the designation procedures for the Secretary to follow, and establishes opportunities for Congressional review.

S. 1102 is one of a series of bills which together provide a comprehensive authorization for NOAA under the Department of Commerce.

LEGISLATIVE HISTORY

Testimony on the National Marine Sanctuary program was presented as part of the NOAA ocean and coastal programs hearing on February 28, 1983, before the Committee on Commerce, Science, and Transportation. Representatives from industry, academia and government addressed the achievements and problems of the National Marine Sanctuary program. S. 1102 was introduced by the Committee Chairman, Senator Bob Packwood, on April 19, 1983, to provide authorization of appropriations for the program.

A number of interests expressed a desire for amendments to the act that would clarify the National Marine Sanctuary designation process. The amendments proposed would require consultation with the Congress, State, and Federal agencies, and the Regional Fishery Management Councils affected by the designation; call for the consideration of the effect of sanctuary designation and regulation on the oil and gas

and commercial fishing activities in the designated area; and allow Congressional review of the site designation.

Discussions resulted in an amendment in the nature of a substitute to S. 1102 which is expected to remove the uncertainty accompanying the National Marine Sanctuary program. On September 20, 1983, the Committee by unanimous consent ordered reported S. 1102.

SUMMARY OF THE BILL

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S. 1431 et seq.) is amended through this legislation, cited as the "Marine Sanctuaries Amendments of 1983". The amendments address:

1. The sanctuary designation standards;
2. The procedures for sanctuary designation and implementation;
3. The international application of sanctuary regulations and negotiations;
4. The research and interpretation programs of sanctuaries; and
5. The enforcement authorities and responsibilities of sanctuaries.

The bill contains a 3-year authorization for the National Marine Sanctuaries program.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 23, 1983.

Hon. BOB PACKWOOD,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1102, the Marine Sanctuaries Amendments of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

SEPTEMBER 23, 1983.

1. Bill number: S. 1102.
2. Bill title: Marine Sanctuaries Amendments of 1983.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, September 20, 1983.

4. Bill purpose: The bill amends Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, and authorizes appropriations for fiscal year 1984, 1985, and 1986 to administer the provisions of that title.

Under Title III, the Secretary of Commerce is authorized to designate portions of the marine environment as national marine sanctuaries.

5. Estimated cost to the Federal Government:

Authorization level:

Fiscal year:	Millions
1984	\$2.3
1985	2.5
1986	2.8
1987	
1988	

Estimated outlays:

Fiscal year:	Millions
1984	2.0
1985	2.4
1986	2.8
1987	.4
1988	

The costs of this bill fall within budget function 300.

Basis of estimate.—The authorization levels are those stated in the bill, and are assumed to be appropriate in full prior to the beginning of each fiscal year. Outlays are estimated based on historical spending patterns for this program.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 29, 1983, CBO prepared a cost estimate for H.R. 2062, the House companion version of this bill. The amounts authorized for appropriation by H.R. 2062 were identical to the authorizations in S. 1102.

9. Estimate prepared by: Anne E. Hoffman.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill, as reported, amends and authorizes title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

The bill is not expected to result in additional regulatory burdens on either businesses or individuals. While a specific requirement would be made for a management plan, regulations, and environmental impact statement for each sanctuary proposal, this is simply a statutory expression of NOAA's current interpretation of its legal obligations. Likewise, the economic impact will be negligible and paperwork is not likely to increase over the present level. There will be no impact on personal privacy.

SECTION-BY-SECTION ANALYSIS

This bill contains two sections: The first section, which names the bill as the "Marine Sanctuaries Amendments of 1983"; and section 2, which amends title III of the Marine Protection, Research, and Sanctuaries Act of 1972. The revised sections of title III are described below.

SECTION 301.—FINDINGS, PURPOSES, AND POLICIES

Section 301 finds that certain areas of the marine environment should be designated as marine sanctuaries because they possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities of national significance. The purposes and policies of the act are to identify, conserve, and manage marine sanctuaries; to support and coordinate scientific research on the resources of such sanctuaries; and to enhance public awareness and use of the sanctuaries and their resources.

SECTION 302.—DEFINITIONS

Section 302 defines the terms "draft management plan", "Magnuson Act", "marine environment", "Secretary", and "State".

SECTION 303.—SANCTUARY DESIGNATION STANDARDS

Section 303(a) grants authority to the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries and sets forth the standards to be considered in making such a designation. Before designating, the Secretary must consider the significance, present and potential uses, conservation and management needs, and the size of the proposed area. It is the Committee's intent that the quality of the available Federal and State management capability should be carefully considered by the Secretary in deciding the size of a sanctuary.

Prior to the 1980 Marine Sanctuary amendments, designation of several extremely large areas were suggested to the Secretary. One such area suggested was the Bering Straits of Alaska, which encompasses 107,000 square miles. This is viewed as an unrealistic size for effective conservation and management.

Section 303(b) requires the Secretary to consider specific factors affecting an area's designation; consult with the appropriate Congressional committees, State, local and Federal entities, and Regional Fishery Management Councils affected by the proposal designation; and draft a resource assessment report that documents the present and potential uses of the area. Among the considerations the Secretary is to take into account in a sanctuary designation are:

1. The area's natural resources, historical, cultural, and ecological qualities;
2. Present and potential uses of the area;
3. Manageability in terms of size, accessibility, and suitability for monitoring and enforcement activities;
4. Potential public benefits of sanctuary status; and
5. Probable socioeconomic effects of the designation.

The resource assessment report is required to be included in the draft environmental impact statement described under section 304(a) for the proposed sanctuary. When a particular resource use is within the primary jurisdiction of the Department of the Interior, the Secretary is required to prepare that portion of the report in consultation with the Secretary of the Interior.

The Committee can offer no absolute standards to be applied when an area is under consideration. While the factors indicating sanctuary status will vary from site to site, the combination of attributes should indicate an area of national significance. In addition, the Secretary should also consider the potential for conflict among users of a marine area, with the intent of promulgating regulations that encourage harmonious multiple-use, to the extent that such use is consistent with the purposes for which the sanctuary was designated.

SECTION 304.—PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

Section 304(a) defines the procedures that the Secretary must follow in proposing a national marine sanctuary. The Secretary is required to publish in the Federal Register a notice of the proposal, the proposed regulations and a summary of the draft management plan.

The Secretary must prepare a draft environmental impact statement (as provided by the National Environmental Policy Act of 1969) on the proposed designation, the draft management plan and regulations.

The draft environmental impact statement will include the resource assessment report described under section 303(b), and maps depicting the boundaries of the area. These maps should be of such a scale to indicate accurately the boundaries of the proposed sanctuary with respect to those present and potential activities affected by sanctuary designation.

Copies of the draft environmental impact statement will be available to the public and the Secretary must hold at least one hearing in the coastal area or areas most affected by the designation.

The Secretary is required to transmit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the sanctuary proposal. The prospectus will include the basis of the findings and the terms of the designation, an assessment of the Secretary's considerations in compliance with section 303, the mechanisms of coordinating regulatory and management authorities, the draft management plan, an estimate of the costs of maintaining the sanctuary, the draft environmental impact statement, and proposed regulations.

The Secretary must provide the appropriate Regional Fishery Management Council with the opportunity to draft regulations on fishing activities within the sanctuary. It is the Committee's intent that the Regional Fishery Management Council be given the opportunity to draft the fishing regulations because of their familiarity with the resource base and the fishing activities within the proposed area. The Secretary may reject or modify these regulations if the Secretary determines that they are inconsistent with the goals and objectives of the proposed sanctuary.

A 45-day period of review of the sanctuary proposal begins on the date of submission of the prospectus to the House Committee on Mer-

chant Marine and Fisheries and the Senate Committee on Commerce, Science, and Transportation. During this period, the Committees may hold hearings and issue a report on the proposed sanctuary. If either Committee issues a report, the Secretary must consider the report before designating the sanctuary.

Section 304(b) states that, to designate a national marine sanctuary, the Secretary must publish in the Federal Register a notice of the designation and final regulations, but they do not become effective before the close of a 45-day period for Congressional review. The period of Congressional review begins on the date of publication of the Federal Register notice designating a national marine sanctuary.

The designation will take effect after the expiration of the 45-day period for congressional action unless the Congress disapproves the designation by adopting a joint resolution of disapproval, or in the case of a sanctuary located within the jurisdiction of a State, the Governor finds such designation unacceptable. Only those portions of the designation not disapproved shall take effect.

If the Committee reports a joint resolution of disapproval, a motion to proceed to consideration of the joint resolution on the floor of the House and Senate will be privileged and not debatable.

The Secretary cannot terminate any valid lease, permit, license, right of subsistence use, or right of access if any lease, permit, license or right was in existence on the date of enactment of this act with respect to any sanctuary designated before that enactment, or if any lease, permit, license or right is in existence on the date of designation after enactment of this act. But the Secretary can regulate the same, consistent with the purposes for which the sanctuary is designated.

The Committee intends that the Secretary respect such leases, permits, licenses, right of subsistence use, or right of access, in recognition of the variety of uses within marine areas. The Secretary should use regulatory approaches that accommodate these uses, consistent with the purposes for which the sanctuary is designated.

SECTION 305.—INTERNATIONAL APPLICATION OF REGULATIONS AND NEGOTIATIONS

Section 305 requires that the regulations issued under the authority of section 304 be in accord with international law.

SECTION 306—RESEARCH AND INTERPRETATION

Section 306 authorizes research and interpretation programs in marine sanctuaries.

SECTION 307—ENFORCEMENT

Section 307 sets forth the enforcement authority and responsibilities of the Secretary and specifies civil penalties for violations of marine sanctuary regulations. Jurisdiction is given to the U.S. district courts.

SECTION 308.—AUTHORIZATION OF APPROPRIATIONS

Section 308 authorizes appropriations for fiscal years 1984, 1985, and 1986 at sums not to exceed \$2,264,000; \$2,500,000; and \$2,750,000, respectively.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman) :

THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

Title III of that Act

[TITLE III—MARINE SANCTUARIES

[SEC. 301. Notwithstanding the provisions of subsection (h) of section 3 of this Act, the term "Secretary", when used in this title, means Secretary of Commerce. The term "State", when used in this title, means any of the several States or any territory or possession of the United States which has a popularly elected Governor.

[SEC. 302. (a) Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other interested Federal agencies, and with the approval of the President, may designate as marine sanctuaries those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. The consultation shall include an opportunity to review and comment on a specific proposed designation.

[(b) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State on superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2 of title I of the Act of May 22, 1953 (67 Stat. 29), the Secretary shall consult with, and give the consideration to the views of, the responsible officials of the State involved.

[(2) A designation under this section shall become effective unless—

[(A) the Governor of any State described in paragraph (1) certifies to the Secretary, before the end of the sixty-day period beginning on the date of the publication of the designation, that the designation or any of its terms described in subsection (f) (1), are unacceptable to his State, in which case those terms certified as unacceptable will not be effective in the waters described in paragraph (1) in such State until the Governor withdraws his certification of unacceptability; or

[(B) both Houses of Congress adopt a concurrent resolution in accordance with subsection (h) which disapproves the designation or any of its terms described in subsection (f) (1).

The Secretary may withdraw the designation after any such certification or resolution of disapproval. If the Secretary does not withdraw the designation, only those portions of the designation not certified as unacceptable under subparagraph (A) or not disapproved under subparagraph (B) shall take effect.

[(c) When a marine sanctuary is designated, pursuant to this section, which includes an area of ocean waters outside the territorial jurisdiction of the United States, the Secretary of State shall take such actions as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary agreements with those Governments, in order to protect such sanctuary and to promote the purposes for which it was established.

[(d) The Secretary shall submit a biennial report to the Congress, on or before March 1 of every other year beginning in 1984, setting forth a comprehensive review of his actions during the previous two fiscal years undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.

[(e) Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

[(f) (1) The terms of the designation shall include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological or esthetic value; and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which an original designation is made.

[(2) The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide.

[(3) The Secretary shall conduct such research as is necessary and reasonable to carry out the purposes of this title.

[(4) The Secretary and the Secretary of the department in which the Coast Guard is operating shall conduct such enforcement activities as are necessary and reasonable to carry out the purposes of this title. The Secretary shall, whenever appropriate and in consultation with the Secretary of the department in which the Coast Guard is operating, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis in carrying out his responsibilities under this title.

[(g) The regulations issued pursuant to subsection (f) shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States.

[(h) For purposes of subsection (b) (2) (B), the Secretary shall transmit to the Congress a designation of a marine sanctuary at the time of its publication. The concurrent resolution described in subsection (b) (2) (B) is a concurrent resolution which is adopted by both Houses of Congress before the end of the first period of sixty calendar days of continuous session of Congress after the date on which the designation is transmitted, the matter after the resolving clause of which is as follows: "That the Congress does not favor the taking of effect of the following terms of the marine sanctuary designation numbered _____ transmitted to Congress by the Secretary of Commerce on _____: _____", the blank space being filled with the number of the designation, the second blank space being filled with the date of the transmittal, and the third blank space being filled with the terms of the designation which are disapproved (or the phrase "the entire designation" if the entire designation is disapproved).

[(2) For the purpose of paragraph (1) of this subsection—

[(A) continuity of session is broken only by an adjournment of Congress sine die; and

[(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

[(3) A designation which becomes effective, or that portion of a designation which takes effect under subsection (b), shall be printed in the Federal Register.

[SEC. 303. (a) Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to this title shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

[(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

[(c) A vessel in the violation of a regulation issued pursuant to this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

[(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary.

[SEC. 304. There are authorized to be appropriated not to exceed \$10,000,000 for each of the fiscal years 1973, 1974, and 1975, not to exceed \$6,200,000 for fiscal year 1976, not to exceed \$1,550,000 for the transition period (July 1 through September 30, 1976), not to exceed \$500,000 for fiscal year 1977, not to exceed \$500,000 for fiscal year 1978, not to exceed \$2,250,000 for fiscal year 1981, not to exceed \$2,235,000 for fiscal year 1982, and not to exceed \$2,235,000 for fiscal year 1983, to carry out the provisions of this title, including the acquisition, development, and operation of marine sanctuaries designated under this title.]

TITLE III—NATIONAL MARINE SANCTUARIES

SEC. 301. FINDINGS, PURPOSES, AND POLICIES.—

(a) FINDINGS.—*The Congress finds that—*

(1) *this Nation historically has recognized the importance of protecting special areas of its public domain, but such efforts have been directed almost exclusively to land areas above the high water mark;*

(2) *certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance;*

(3) *while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;*

(4) *a Federal program which identifies special areas of the marine environment will contribute positively to marine resource conservation and management; and*

(5) *such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.*

(b) PURPOSES AND POLICIES.—*The purposes and policies of this title are—*

(1) *to identify areas of the marine environment of special national significance due to their resource or human-use values;*

(2) *to provide authority for comprehensive and coordinated conservation and management of these marine areas which will complement existing regulatory authorities;*

(3) *to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;*

(4) *to enhance public awareness, understanding, appreciation and wise use of the marine environment; and*

(5) *to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.*

SEC. 302. DEFINITIONS.—*As used in this title, the term—*

(1) *"draft management plan" means the plan described in section 304(a)(1)(E);*

(2) *"Magnuson Act" means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);*

(3) *"marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the U.S. exercises jurisdiction, consistent with international law;*

(4) *"Secretary" means the Secretary of Commerce; and*

(5) *"State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Common-*

wealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory or possession of the United States.

SEC. 303. SANCTUARY DESIGNATION STANDARDS.—

(a) **STANDARDS.**—*The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that such designation will fulfill the purposes and policies of this title, and if the Secretary finds that—*

(1) *the area is of special national significance due to its resources or human-use values;*

(2) *existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education, and that designation of such area as a national marine sanctuary will facilitate these objectives; and*

(3) *the area is of a size and nature which will permit comprehensive and coordinated conservation and management.*

(b) **FACTORS AND CONSULTATIONS REQUIRED IN MAKING FINDINGS.—**

(1) **FACTORS.**—*For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider—*

(A) *the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;*

(B) *the area's historical, cultural, archaeological, or paleontological significance;*

(C) *the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and recreational activities, and research and education;*

(D) *present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);*

(E) *existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;*

(F) *the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;*

(G) *the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;*

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resource development, including minerals and energy development; and

(I) the socioeconomic effects of sanctuary designation.

(2) **CONSULTATIONS.**—In making such determination, the Secretary shall consult with—

(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Secretaries of State, Defense, Transportation, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies;

(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

(3) **RESOURCE ASSESSMENT REPORT.**—In making such determination, the Secretary also shall draft, as part of the environmental impact statement required under section 304(a)

(1), a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall be responsible for drafting a resource assessment section for the report regarding any commercial or recreational resource uses in the area under consideration which are subject to the primary jurisdiction of the Department of the Interior.

SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.—

(a) SANCTUARY PROPOSAL.—

(1) **NOTICES.**—In proposing to designate a national marine sanctuary, the Secretary shall issue in the Federal Register a notice of the proposal, together with proposed regulations that may be necessary and reasonable to implement such proposal and a summary of the draft management plan. The Secretary shall provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal. After issuing a notice the Secretary shall conduct at least one public hearing in the area affected by the proposed designation. The Secretary shall also prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of

1969 (42 U.S.C. 4321 et seq.), on the area proposed for designation and on the draft management plan and regulations. Such draft statement shall include the resource assessment report required under section 303 (b) (3), and maps depicting the boundaries of the proposed designated area and the existing and potential uses and resources of the area. Copies of the draft environmental impact statement shall be available to the public. No sooner than 30 days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties. On the same day as such notice is issued, the Secretary shall also submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the proposal which shall contain—

- (A) the terms of the proposed designation;
- (B) the basis of the findings made under section 303 (a) with respect to the area;
- (C) an assessment of the considerations under section 303 (b) (1);
- (D) proposed mechanisms to coordinate existing regulatory and management authorities within the area;
- (E) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement and surveillance activities for the area;
- (F) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;
- (G) the draft environmental impact statement prepared under this subsection;
- (H) an evaluation of the advantages of cooperative State and Federal management where proposed marine sanctuaries lie within the territorial limits of any State or are superjacent to the subsoil and seabed within the seaward boundary of a State, as the term "boundary" is used in the Submerged Lands Act (43 U.S.C. 1301 et seq.); and

(I) proposed regulations to implement the terms of designation and the measures referred to in subparagraphs (A), (D) and (E) and paragraph (3).

(2) **TERMS OF DESIGNATION.**—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of a designation may be modified only by the same procedures by which the original designation was made.

(3) *FISHING REGULATIONS.*—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare such draft regulations for fishing within the United States Fishery Conservation Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council or a Council determination that regulations are not necessary pursuant to this paragraph shall be accepted and promulgated by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall also use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare such regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to fishing regulations shall be drafted, approved and promulgated in the same manner as the original regulations.

(4) *COMMITTEE ACTION.*—After receiving the prospectus under subsection (a)(1), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If within the 45-day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report concerning matters addressed in the prospectus, the Secretary shall consider such report before designating the national marine sanctuary.

(b) *TAKING EFFECT OF DESIGNATIONS.*—

(1) *NOTICE.*—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall also advise the public of the availability of the draft management plan and the environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(4). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of 45 days of continuous session of Congress beginning on the day on which such notice is issued unless—

(A) the Congress disapproves the designation or any of its terms, by adopting a joint resolution of disapproval described in paragraph (3); or

(B) in the case of a national marine sanctuary that is located partially or entirely within the jurisdiction of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the jurisdiction of the State.

(2) *WITHDRAWAL OF DESIGNATION.*—If the Secretary considers that actions taken under paragraph (1) (A) or (B) will affect the designation in such a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the designation. If the Secretary does not withdraw the designation, only those portions of the designation not certified as unacceptable under paragraph (1) (A) or not disapproved under paragraph (1) (B) shall take effect.

(3) *RESOLUTION OF DISAPPROVAL.*—For the purposes of this subsection, the term "resolution of disapproval" means a joint resolution which states after the resolving clause the following: "That the Congress disapproves the national marine sanctuary designation entitled _____ that was submitted to Congress by the Secretary of Commerce _____", the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the joint resolution shall state after the resolving clause the following: "That the Congress approves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on but disapproves the following terms of such designation:.", the first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.

(4) *PROCEDURES.*—

(A) In computing the 45-day periods of continuous session of Congress pursuant to subsection (a) (4) and paragraph (1) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain are excluded.

(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in

order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(5) ACCESS AND VALID RIGHTS.—Nothing in this title shall be construed as terminating, or granting to the Secretary the right to terminate, any valid lease, permit, license, right of subsistence use, or right of access: Provided, That such lease, permit, license or right was in existence on the date of enactment of the Marine Sanctuaries Amendments of 1983, with respect to any national marine sanctuary designated before such date: Provided further, That such lease, permit, license or right is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after the date of enactment of the Marine Sanctuaries Amendments of 1983: And provided further, That the exercise of such lease, permit, license or right shall be subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

SEC. 305. INTERNATIONAL APPLICATION OF REGULATIONS AND NEGOTIATIONS.—

(a) REGULATIONS.—The regulations issued under section 304 shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign state of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag state of the vessel, no regulation applicable to area or activities outside the jurisdiction of the United States shall be applied to a person not a citizen, national, or resident alien of the United States.

(b) NEGOTIATIONS.—After the taking effect under section 304 of a national marine sanctuary that applies to an area or activity beyond the jurisdiction of the United States, the Secretary of State shall take such action as may be appropriate to enter into negotiations with other governments in order to make necessary arrangements for the protection of the sanctuary and to promote the purposes for which it is established.

SEC. 306. RESEARCH AND INTERPRETATION.—The Secretary shall conduct such research and interpretation programs as are necessary and reasonable to carry out the purposes and policies of this title.

SEC. 307. ENFORCEMENT.—

(a) *IN GENERAL.*—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or of State departments, agencies and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this title.

(b) *CIVIL PENALTIES.*—

(1) *CIVIL PENALTY.*—Any person subject to the jurisdiction of the United States who violates any regulation issued under this title shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) *NOTICE.*—No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(3) *IN REM JURISDICTION.*—A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(c) *JURISDICTION.*—The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on his own initiative or the request of the Secretary.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this title, there are authorized to be appropriated not to exceed \$2,264,000 for fiscal year 1984, \$2,500,000 for fiscal year 1985, and \$2,750,000 for fiscal year 1986.